National Labor Relations Board Weekly Summary of

NLRB Cases

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Regional Office (Region 15) After the Temporary
Closing Caused by Hurricane
Gustav

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Faurecia Automotive Seating (9-CA-44400; 353 NLRB No. 5) Shelby, MI Sept. 10, 2008. The Board affirmed its practice to follow *D. L. Baker, Inc.*, 330 NLRB 521, fn.4 (2002) with regard to requests to revoke subpoenas and permitted the Employer's reply in support of Petition to Revoke Subpoena but denied the General Counsel's request to file a surreply. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Graphic Communications Conference Teamsters Local 17B (3-CB-8648; 353 NLRB No. 4) Depew, NY Sept. 12, 2008. The Board found that the Respondent, Graphic Communications Conference Teamsters Local 17B, violated Section 8(b)(3) of the Act by refusing to execute the agreed-upon collective-bargaining agreement. [HTML] [PDF]

This case arose when the Employer engaged in concession bargaining with all of the unions representing its employees in order to avoid a transfer of operations and closure of the printing facility by Employer's parent company. The Union represents binder/trimmer employees at the Employer's Depew printing facility. Chief among the concessions that the Employer sought was a reduction in force of one employee per binder/trimmer line (a total of 21 employees). The Union proposed, among other things, that the reduction be achieved using Article 17.15 of the existing collective-bargaining agreement, which allowed for temporary staffing changes by mutual agreement. The Employer refused on the basis that Article 17.15 would allow the Union to defeat the manning reduction if it did not agree. Credited testimony established that the Union accepted the Employer's Dec. 8 final offer which included the reduction without limitation. When union members voted to reject ratification, however, the Union and the Employer held further discussions and the Employer agreed on Dec. 13 that it would apply Article 17.15 as needed *after* the manning reduction was effected. The Union presented the agreement to its membership a second time, telling them that the Employer agreed to use Article 17.15 to achieve the reduction.

The Board affirmed the administrative law judge's finding that the Employer and the Union reached a meeting of the minds regarding the manning reduction on Dec. 8 and regarding the use of Article 17.15 for post-reduction staffing changes on Dec. 13. The Board also affirmed the judge's finding that even if the membership ratified the contract in reliance on the Union's misrepresentations, there was no basis for avoiding the contract because the misrepresentation was a unilateral mistake of which the Employer could not have been on notice. Consequently, the Board adopted the judge's finding that the Union's failure to execute the concession agreement at a subsequent signing ceremony was unlawful.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Quebecor World Buffalo, Inc.; complaint alleged violation of Section 8(b)(3). Hearing at Buffalo, Aug. 28-29, 2007. Adm. Law Judge Wallace H. Nations issued his decision Jan. 18, 2008.

Premier Home Health Care Service, Inc. d/b/a Metropolitan Home Health Care (22-CA-28089; 353 NLRB No. 3) Elmwood Park and Weehawken, NJ Sept. 11, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing the Union's request for financial information, including the Respondent's revenue rates and its total revenue broken down by component. The Board found that the requested financial information was relevant to the Union's bargaining duties, in light of the Respondent's proposal to make wages and benefits dependent on increases in its revenue. The Board rejected the Respondent's argument that the requested financial information was neither relevant nor necessary because it never claimed an inability to pay, citing Caldwell Manufacturing Co., 346 NLRB 1159, 1160 (2006). Furthermore, the Board agreed with the judge that the Respondent did not meet its burden of proving that it had a legitimate and substantial confidentiality interest in the requested information. The Board noted that, while the Respondent excepted to the judge's finding that it bore such a burden, the Respondent did not argue on exception that it demonstrated a confidentiality interest in the requested information. [HTML]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by SEIU 1199 New Jersey Health Care Union; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark on April 23, 2008. Adm. Law Judge Eleanor MacDonald issued her decision June 26, 2008.

Quebecor World Mt. Morris II, LLC (33-CA-15319; 353 NLRB No. 1) Mt. Morris, IL Sept. 8, 2008. The Board, reversing the administrative law judge, found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by unilaterally implementing a "performance improvement plan" (PIP) procedure, and by demoting a bargaining-unit employee pursuant to a PIP. The Board affirmed the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to provide relevant information requested by the Union in the course of processing a grievance over the PIP procedure. [HTML] [PDF]

Specifically, the Board decided that the judge erred in finding ineffective the contractual parties' oral agreement to extend their expiring collective-bargaining agreement while they negotiated a successor contract. The Board concluded that the oral agreement was valid, and that the extended collective-bargaining contract was in effect at all relevant times. Consequently, the Board decided that the Respondent's unilateral implementation of the PIP process, and its application to employee Robert Gigous, were clearly and unmistakably permitted under the contract's management-rights clause. The Board relied on *Provena St. Joseph Medical Center*, 350 NLRB No. 64 (2007) to support the application of the clear-and-unmistakable test. Accordingly, the Board reversed the judge and dismissed these two 8(a)(5) allegations.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Graphic Communications Conference Teamsters Local 65-B; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Peoria on Sept. 17, 2007. Adm. Law Judge George Carson II issued his decision Nov. 8, 2007.

Union-Tribune Publishing Co., A Division of Copley Press, Inc. (21-CA-37535; 353 NLRB No. 2) San Diego, CA Sept. 9, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing two drug testing policies, one applicable to a bargaining unit of packaging employees and another applicable to a unit of pressroom employees. The Respondent administered a drug test to a packaging employee whose annual hearing test showed a certain level of hearing loss and to a pressroom employee who claimed "cumulative trauma" hearing loss from repeated noise exposure at work. The Board found that the Respondent failed to prove its affirmative defense that it acted in accordance with established past practice. [HTML] [PDF]

The Board also adopted the judge's dismissal of allegations that the Respondent violated Section 8(a)(5) and (1) by terminating the two employees when their drug test results were positive for marijuana. Citing *Anheuser-Busch*, *Inc.*, 351 NLRB No. 40 (2007), the judge reasoned that where employees are discharged for violating company work rules (here, the Respondent's drug and alcohol policies), the discharge is "for cause" under Section 10(c) of the Act, even if the employees' conduct is discovered by means of an unlawful unilateral change. Also based on *Anheuser-Busch*, the judge found that reinstatement was not an appropriate remedy for the unlawful unilateral changes. The Board adopted the judge's findings. Member Liebman observed that she had dissented in *Anheuser-Busch* and that the charging party in that case had petitioned the court for review. However, she acknowledged that *Anheuser-Busch* is extant Board law, and, on that basis, she affirmed the judge's application of it.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Graphic Communications Conference Teamsters Local 423M; complaint alleged violations of Section 8(a)(1) and (5). Hearing at San Diego, Oct. 1-2, 2007. Adm. Law Judge Burton Litvack issued his decision April 24, 2008.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Chrysler, LLC (Auto Workers [UAW] Local 412) Auburn Hills, MI Sept. 9, 2008. 7-CA-50862, 50863; JD-48-08, Judge Earl E. Shamwell Jr.

Shintech, Inc. (Operating Engineers Local 564) Freeport, TX Sept. 10, 2008. 16-CA-26077; JD(ATL)-34-08, Judge Keltner W. Locke.

Albertson's LLC (Food & Commercial Workers Local 1564) Las Cruces, NM Sept. 10, 2008. 28-CA-21744; JD(SF)-35-08, Judge William G. Kocol.

Haws, Inc. (Individuals) Pleasant Hill, IA Sept. 11, 2008. 18-CA-18611, 18666; JD(SF)-36-08, Judge William L. Schmidt.

Altercare of Wadsworth Center for Rehabilitation and Nursing Care, Inc. (Service Employees District 1199) Cleveland, OH Sept. 12, 2008. 8-CA-37436; JD-51-08, Judge Michael A. Rosas.

Quickway Transportation, Inc. (Teamsters Local 639) Landover, MD Sept. 12, 2008. 5-CA-33111, et al.; JD-50-08, Judge Eric M. Fine.

Steelworkers and its Local 2285 (Wyman-Gordon Co.) Worcester, MA Sept. 11, 2008. 1-CB-10833; JD(ATL)-33-08, Judge John H. West.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Peninsula Hospital Center, Far Rockaway, NY, 29-RC-11583, Sept. 9, 2008 (Chairman Schaumber and Member Liebman)

DECISION AND ORDER REMANDING [case to Regional Director for further appropriate action]

OPW Fueling Components, Cincinnati, OH, 9-RD-2168, Sept. 9, 2008 (Chairman Schaumber and Member Liebman)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

New Albertson's Inc., Rock Springs, WY, 27-RD-1212, 1213, Sept. 12, 2008
Lanphere Enterprises of Washington, Inc., d/b/a Renton Honda/Kia, Renton, WA, 19-RD-3790, Sept. 12, 2008

DECISION, ORDER [granting Employer's request to withdraw its exceptions and supporting brief] AND CERTIFICATION OF RESULTS OF ELECTION

Henkel Corp., Bay Point, CA, 32-RC-5560, Sept. 12, 2008

Miscellaneous Board Decisions and Orders

ORDER [granting Employer's request to accept its late-filed response to the Intervenor's exceptions to Regional Director's report on objections and notice of hearing]

Peninsula Hospital Center, Far Rockaway, NY, 29-RC-11583, Sept. 8, 2008